

New!

2012 Contractor (1099) Amnesty Program of the Michigan Unemployment Insurance Agency

Employee?

Contractor?

- When workers perform services for a business, they may be employees or they may be contractors.
- It is not an option for a worker to be either a contractor or an employee. The situation must be evaluated based on a set of common law rules.
- When there is a question as to which status applies, contractor or employee, it must be ruled on as an employment status issue.
- When an employment status issue exists, the UIA may issue a Services Determination finding the status to be either that of a contractor or an employee.

Have you been reporting your workers as employees or contractors?

Employers sometimes believe that they may agree or contract as to the status of their workers. Any agreement made as to the status of the workers, contractor or employee, is unenforceable if it does not comply with the laws governing the status. If a worker who has been considered a contractor files a claim for unemployment benefits, it is necessary for the Unemployment Agency to make a Services Determination to determine whether the contractor is actually an employee.

The Differences between Contractors and Employees

- a) Employees earn wages or salaries.
- b) Contractors have profits or losses.
- c) Employees may collect unemployment benefits while contractors are excluded from benefits.
- d) Employers are liable for taxes on their employees but not on their contractors.
- e) Should a business improperly classify their workers as contractors but the these workers are later found to be employees, the business may face substantial tax liability.

Worker misclassification occurs when an employer incorrectly classifies a worker as a non-employee. There are many differences between contractors and employees. If a business classifies a contractor as an employee, the business may pay too much in taxes. If the business improperly reports an employee as a contractor, it may face substantial taxes, interest and penalties. The improperly classified worker could cause tax liability from several taxing authorities.

1099 Amnesty Program

Under Section 42a

- The contractor amnesty program is a short term program that allows an employer to request a Determination on employment status of one or more classes of workers.
- If there is a concern that workers may be misclassified, it is an opportunity to get an official ruling without application of the normal retroactive taxes and possible penalties and interest.

UIA 2012 Employer Seminars

4

The amnesty program has been passed, and is Under Section 42a.

If you are uncertain about the classification of your workers, this is a great opportunity to resolve the questions once and for all.

How does the program work?

- The program is currently available and employers have until January 1, 2013 to request the agency to determine whether their workers are “employees”.
- If a business is participating in the contractor amnesty program, any determination will only apply to future quarters. There will be no additional tax for prior quarters.
- There are no interest or penalties during the amnesty program.
- Should a worker file a claim for benefits related to a class of worker that is under the contractor amnesty program, it will not result in the normal retroactive taxes. Any benefit charges based on wages prior to the Determination will not be charged to the employer account.

This is a limited time program that reduces or eliminates most of the financial concerns that a business may have about bringing attention to workers who may not be properly classified.

How to Apply

To apply for the contractor amnesty program contact:

Office of Employer Ombudsman (OEO)
1-855-4UIAOEO (855-484-2636).

Outside of Michigan, please call 1-313-456-2300.
You can also email to OEO@michigan.gov.

How are the workers reviewed for possible misclassification?

The economic reality test will be used for the contractor amnesty program until 2013. At that time the Amnesty program will end and the Agency will begin using the IRS 20 factor test.

An employer will be sent a Form UIA 1015, *Employer's Application for Determination of Employment Status*. Based on responses, Investigators may call with additional questions.

UIA form 1015 is available online at the UIA's public website. Since this form will be used to collect information about the classes of workers, it can be completed in advance.

Issuing a Services Determination

The economic reality test developed by the Michigan courts will be used in the Amnesty Program to evaluate whether:

- a) The employer will incur liability if the relationship terminates at will
- b) The work performed is an integral part of the employer's business
- c) The employee depends upon the wages for living expenses
- d) The employee furnishes equipment and materials
- e) The employee holds himself out to the public as able to perform the same tasks
- f) The work involved is customarily performed by an independent contractor
- g) The factors of control, payment of wages, maintenance of discipline and the right to hire and fire employees belonged to the employer
- h) Weighing those factors which will most favorably effectuate the purposes of the Michigan Employment Security Act.

This slide outlines the factors used in the Economic Reality test, which will be used for the Amnesty Program.

Protests and Appeals

If you receive a Determination on the workers in question, you may disagree.

If you disagree with an Agency Determination, you must make a timely protest in writing within 30 days of the determination mail-date.

